

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0554, Jonathan Wolfgram v. Vermont Mutual Insurance Company, the court on September 11, 2006, issued the following order:**

The defendant, Vermont Mutual Insurance Company, appeals the trial court's denial of its request to offset a jury verdict for the plaintiff, Jonathan Wolfgram, by the amount it paid to the mortgagee. We reverse and remand.

We begin by examining the jury instructions. The court instructed the jury, in pertinent part, that "if a building insured for a specific amount is totally destroyed by fire, without criminal fault on the part of the insured, the sum for which such building is insured shall be taken to be the value of the insured's interest therein unless over-insurance thereon was fraudulently obtained." The court further instructed the jury: "If an insured's building is only partially destroyed by fire, the insured shall be entitled to the actual loss sustained, not exceeding the sum insured."

As these instructions demonstrate, the jury was asked to determine if the building was totally or only partially destroyed and to assess damages depending upon the level of destruction to the building. The jury was not asked to determine whether the plaintiff was entitled to money, over and above that which the defendant paid to his mortgage holder. We presume that the jury followed these instructions. See Nilsson v. Bierman, 150 N.H. 393, 403 (2003).

The jury heard evidence that the plaintiff believed that the fire totally destroyed the building and that the building was insured for approximately \$135,000.00. The jury also heard evidence that the defendant believed that the building was not totally destroyed by fire and that its adjuster had assessed the actual loss at \$34,902.16. The jury's verdict thus represented its factual determination that the fire only partially destroyed the building and its assessment of damages for this partial destruction. As the defendant already paid the mortgage holder for the actual loss sustained to the building, the trial court erred when it denied the defendant's motion to offset the \$35,000.00 verdict by the \$34,902.16 paid to the mortgage holder.

Reversed and remanded.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.